

## Message Text

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ACTION IO-11

INFO OCT-01 AF-06 EUR-12 ISO-00 OIC-02 CU-02 AGR-05 DOTE-00

HUD-01 HEW-02 INT-05 AID-05 CEQ-01 CIAE-00 COME-00

EB-07 EPA-01 INR-07 L-03 NSF-01 NSC-05 NSAE-00 OES-03

SS-15 SP-02 FEAE-00 SSO-00 NSCE-00 INRE-00 PA-01

PRS-01 IOE-00 /099 W

----- 128866

O R 231755Z FEB 76

FM USMISSION USUN NY

TO SECSTATE WASHDC IMMEDIATE 6001

INFO USMISSION GENEVA

AMEMBASSY NAIROBI

AMEMBASSY OTTAWA

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E.O. 11652: N/A

TAGS: EGEN, UN, HABITAT

SUBJECT: HABITAT-DECLARATION OF PRINCIPLES

REF: (A)STATE 040085

(B) USUN 546

(C) USUN 446

1. AS THE DEPARTMENT IS AWARE, PERMANENT SOVEREIGNTY HAS BEEN A MAJOR AREA OF CONTROVERSY, ESPECIALLY SINCE THE ADVANT OF NIEO AND CERDS. TO OUR KNOWLEDGE, WE AND THE G-77 HAVE NOT BEEN ABLE TO AGREE ON MUTUALLY ACCEPTABLE WORDING FOR USE IN RESOLUTIONS SINCE THE 17TH UNGA, IN 1962.

2. IN OUR APPROACH TO HABITAT SYG PENALOSE (REPORTED REFTTEL C), WE URGED THAT HE ATTEMPT TO AVOID CONTROVERSIAL ISSUES WHICH WERE NOT CENTRAL TO THE PURPOSES OF HABITAT AND, WHEN THAT WWAS NOT POSSIBLE, TO SEEK WORDING WHICH  
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DID NOT VIOLATE THE BASIC PRINCIPLES OF ANY CONTRY. WE

SPECIFICALLY ARGUED THAT HABITAT WAS NOT THE FORUM FOR ATTEMPTING TO NEGOTIATE LONG-STANDING CONTROVERSIAL "POLITICAL" ISSUES.

3. FROM OUR PERSPECTIVE, THE WORDING NOW PROPOSED BY THE SECT FOR USE IN THE HABITAT DECLARATION OF PRINCIPLES (REF (B) ) COMES CLOSER TO A NON-PREJUDICIAL FORMULATION THATN WE COULD RESONABLY HAVE EXPECTED. WHETHER THE FORMULA HAS BEEN PRODUCED BY DESIGN OR INADVERTANCE, IT SEEMS SURPRISINGLY STRONG. APART FROM THE FACT THAT THE TEXT DOES NOT USE THE UNHAPPY TERM "PERMANENT SOVEREIGNTY", THE WORDING PROPOSED BY THE SECT SPEAKS OF THE FREEDOM OF NATIONALIZING STATES TO ACT AFTER "TAKING INTO ACCOUNT THEIR RIGHTS AND DUTIES AS MEMBERS OF THE INTERNATIONAL COMMUNITY". THIS PUTS THE MATTER CLEARLY ON THE LEGAL PLANE. WHILE "TAKING INTO ACCOUNT" HAS BEEN USED IN OTHER PLACES WHERE ITS CONJUNCTIVE CHARACTER TO A FOLLOWING DESCRIPTION OF GENERALIZED POLICY WAS INTENDED TO BE UNSPECIFIC, VAGUE AND FLEXIBLE, THE SAME PHRASE, WHEN COUPLED WITH THE RIGHTS AND DUTIES OF STATES ON THE LEGAL PLANE, APPEARS TO PRESENT A QUITE DIFFERENT AND STRONG LINK. A NATIONALIZING STATE COULD NOT IN GOOD FIATH ASSERT THAT IT HAD COMPLIED WITH THE FORMULA IF IT HAD BRUSHED ASIDE ITS INTERNATIONAL LEGAL DUTIES TO PAY FULL COMPENSATION. IN THIS CONTEXT WE ARE UNSURE THAT SUBSTITUTING THE PHRASE"SUBJECT TO" FOR "TAKING INTO ACCOUNT" WOULD PROVIDE GREATER PROTECTION FOR AMERICAN FOREIGN INVESTMENT.

4. WE BELIEVE THAT THE MERITS OF THE SECT'S FORMULA WARRENT FURTHER CONSIDERATION IN THE LIGHT OF THE LIKELIHOOD THAT AN APPROACH PER REF (A) MAY WELL LEAD THE G-77 TO REOPEN THE SUBSTANTIVE ISSUE AND RESULT IN A FORMULATION SIGNIFICANTLY MORE HOSTILE TO PROTECTION OF AMERICAN INVESTMENT ABROAD. WE SPECULATE THAT OUR G-77 OPPONENTS MAY HAVE GIVEN INSUFFICIENT ATTENTION TO THE SECT'S PROPOSED WORDING. IF IT IS NOW DRAWN TO THEIR ATTENTION BY A US PROPOSAL FOR REVISION THEY ARE LIKELY THEMSELVES TO OPEN UP THE MATTER AND TO WEAKEN SUBSTANTIALLY WHAT PENALOSA HAS PROPOSED. ON THE OTHER HAND, IF THE US LIMITED OFFICIAL USE

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WERE TO DECIDE NOT TO OBJECT TO THE SECT LANGUAGE (EVEN IF, AS WE EXPECT, OUR HABITAT DEL IS INSTRUCTED TO MAKE A STATEMENT OF INTERPRETATION AT VANCOUVER), IT IS DIFFICULT FOR HOSTILE FORCES TO OPEN THE MATTER UP SINCE, TO THEM, THE PROSPECTIVE "ONUS" OF DISAGREEING WITH PENALOSA MIGHT ENCOURAGE THEM TO LET THE MATTER GO FORWARD WITHOUT CHANGE.

5. WHILE A NON-PREJUDICIAL FORMULATION IN THE HABITAT DECLARATION COULD BE PLAYED DOWN BY HOSTILE FORCES WHEN THE COMPENSATION ISSUE ARISES IN OTHER CONTEXTS, WE BELIEVE ITS INCLUSION IN THE DECLARATION COULD HELP IN NEGOTIATING GA FUTURE SITUATIONS. IT GOES WITHOUT SAYING THAT ACCEPTANCE OF THE FORMULATION AT THIS STAGE WOULD HAVE TO BE MADE WITH THE PROVISIO THAT THERE BE NO CHANGES IN THE SECT FORMULATION. IN ALL EVENTS SINCE THIS IS STILL A DRAFT DECLARATION, IT IS ENTIRELY POSSIBLE THAT THE WHOLE ISSUE MIGHT BE REOPENED AT HABITAT ITSELF. THUS WHATEVER THE OUTCOME OF CURRENT INFORMAL NEGOTIATIONS, WE WOULD NEED TO BE PREPARED TO DEAL WITH THIS ISSUE IN VANCOUVER.

6. REQUEST INSTRUCTIONS.  
MOYNIHAN

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## Message Attributes

**Automatic Decaptioning:** X  
**Capture Date:** 01 JAN 1994  
**Channel Indicators:** n/a  
**Current Classification:** UNCLASSIFIED  
**Concepts:** AGREEMENT DRAFT, POLICIES, RESOLUTIONS, HABITAT CONFERENCE, AMENDMENTS  
**Control Number:** n/a  
**Copy:** SINGLE  
**Draft Date:** 23 FEB 1976  
**Decaption Date:** 01 JAN 1960  
**Decaption Note:**  
**Disposition Action:** RELEASED  
**Disposition Approved on Date:**  
**Disposition Authority:** GolinoFR  
**Disposition Case Number:** n/a  
**Disposition Comment:** 25 YEAR REVIEW  
**Disposition Date:** 28 MAY 2004  
**Disposition Event:**  
**Disposition History:** n/a  
**Disposition Reason:**  
**Disposition Remarks:**  
**Document Number:** 1976USUNN00675  
**Document Source:** CORE  
**Document Unique ID:** 00  
**Drafter:** n/a  
**Enclosure:** n/a  
**Executive Order:** N/A  
**Errors:** N/A  
**Film Number:** D760070-0828  
**From:** USUN NEW YORK  
**Handling Restrictions:** n/a  
**Image Path:**  
**ISecure:** 1  
**Legacy Key:** link1976/newtext/t19760222/aaaaasu.w.tel  
**Line Count:** 131  
**Locator:** TEXT ON-LINE, ON MICROFILM  
**Office:** ACTION IO  
**Original Classification:** LIMITED OFFICIAL USE  
**Original Handling Restrictions:** n/a  
**Original Previous Classification:** n/a  
**Original Previous Handling Restrictions:** n/a  
**Page Count:** 3  
**Previous Channel Indicators:** n/a  
**Previous Classification:** LIMITED OFFICIAL USE  
**Previous Handling Restrictions:** n/a  
**Reference:** n/a  
**Review Action:** RELEASED, APPROVED  
**Review Authority:** GolinoFR  
**Review Comment:** n/a  
**Review Content Flags:**  
**Review Date:** 13 APR 2004  
**Review Event:**  
**Review Exemptions:** n/a  
**Review History:** RELEASED <13 APR 2004 by BoyleJA>; APPROVED <14 APR 2004 by GolinoFR>  
**Review Markings:**

Margaret P. Grafeld  
Declassified/Released  
US Department of State  
EO Systematic Review  
04 MAY 2006

**Review Media Identifier:**  
**Review Referrals:** n/a  
**Review Release Date:** n/a  
**Review Release Event:** n/a  
**Review Transfer Date:**  
**Review Withdrawn Fields:** n/a  
**Secure:** OPEN  
**Status:** NATIVE  
**Subject:** HABITAT-DECLARATION OF PRINCIPLES  
**TAGS:** EGEN, US, UN  
**To:** STATE  
**Type:** TE  
**Markings:** Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 04 MAY 2006